

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



September 17, 1998

VIA UNITED PARCEL SERVICE

Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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Re: **California's Comments on Direct Case, Docket No. 98-103**

Dear Ms. Salas:

Enclosed please find an original and six copies of CALIFORNIA'S COMMENTS ON DIRECT CASE in the above-referenced docket.

Also enclosed is one additional copy of this document. Kindly file-stamp this copy and return it to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter. If you have any questions, I can be reached at (415) 703-2047.

Sincerely,

Ellen S. LeVine  
Attorney for the People of the  
State of California and the Public  
Utilities Commission of the  
State of California

ESL:nas

Enclosures

cc: Competitive Pricing Division  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

Pacific Bell Telephone Company  
Pacific Bell Tariff FCC No. 128  
Pacific Transmittal No. 1986

CC Docket No. 98-101

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**CALIFORNIA'S COMMENTS ON DIRECT CASE**

The People of the State of California and the Public Utilities Commission of the State of California ("CPUC") respectfully submit these comments in response to the Order Designating Issues for Investigation in the above-referenced docket.

**I. BACKGROUND**

In this proceeding, Pacific Bell Telephone Company ("Pacific") has filed an interstate access tariff for a high speed access connection, known as Asymmetrical Digital Subscriber Line ("ADSL") service, which interconnects an end user subscriber with an Internet Service Provider ("ISP"). According to Pacific, the ADSL service will enable "the simultaneous transmission of voice dialed calls and high speed data access over a single path, thereby reducing the need for subscribers to obtain additional lines for their Internet access capabilities." Pacific has filed an interstate tariff, even though over two months ago it filed an intrastate tariff with the CPUC. The federal tariff filing is based on

Pacific's current belief that transmissions from an end user to an ISP, which then connects to the Internet, is one continuous transmission which is primarily interstate in nature.

In its request for comments, the Federal Communications Commission ("FCC") asks interested parties to address the jurisdictional nature of Pacific's ADSL service offering, and hence whether a transmission between an end user and an ISP terminates at the ISP, or terminates at the Internet data bases accessed by the end user. In the former case, if the transmission between the end user and ISP begins and ends in a given state, then the transmission is jurisdictionally intrastate.<sup>1</sup> In the latter case, the transmission is intrastate only if the data bases accessed by the end user are also intrastate.

## **II. PROCEEDINGS IN CALIFORNIA**

Over two months ago, on July 7, 1998, Pacific filed an advice letter with accompanying tariff sheets seeking CPUC approval of the identical ADSL service for which it now seeks federal approval. At that time, Pacific did not argue that its ADSL service was primarily interstate, and that only federal tariffs were required under applicable law. Numerous parties protested Pacific's filing

The CPUC is currently reviewing Pacific's intrastate tariff filing and intends to issue an order in the very near future. In addition, the CPUC is considering in its local

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<sup>1</sup> To the extent that the ADSL transmission service connects end users to non-ISPs located within the same state, such as a telecommuter accessing a corporate intranet service via ADSL, then the transmission service would undeniably be intrastate.

competition proceeding the same jurisdictional question now before the FCC in this proceeding. Moreover, the jurisdictional issue of whether reciprocal compensation is owed competitive local carriers who terminate calls to ISPs is the subject of two pending complaints before the CPUC. MFS Intelenet v. Pacific Bell, C.97-09-032 and Pac-West Telecomm v. Pacific Bell, C.97-09-032.

Because of the pendency of cases before the CPUC in which the same or closely similar jurisdictional issues are raised, the CPUC is unable to comment before the FCC without prejudging these cases. The CPUC, however, anticipates issuing orders disposing of the jurisdictional issues in these proceedings no later than October 8, 1998. Upon

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issuance of such orders, the CPUC will immediately forward copies to the FCC for its consideration in this docket.

Respectfully submitted,

PETER ARTH, JR.  
ELLEN S. LEVINE

By:

A handwritten signature in cursive script, appearing to read "Ellen S. Levine", written over a horizontal line.

ELLEN S. LEVINE

505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-2047  
Fax: (415) 703-2262

Attorneys for the People of the  
State of California and the  
Public Utilities Commission of the  
State of California

September 17, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon all known parties of record by mailing, by first-class mail, postage prepaid, a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 17th day of September, 1998.

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NANCY A. SALYER